

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

G&G INTERNATIONAL CORP.,

Plaintiff,

v.

WALTER H. DURAN,

Defendant.

Civil No. 3:15-CV-1772 (JAF)

ORDER

This matter is before the court on Defendant Walter H. Duran's ("Duran") Motion for Change of Venue pursuant to 28 U.S.C. §1404(a). (ECF No. 32). Plaintiff G&G International Corp. ("G&G") timely opposed the motion (ECF No. 35) and the matter is ripe for review. For the following reasons, Defendant Duran's motion is DENIED.

Pursuant to 28 U.S.C. § 1404(a) a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented, "for the convenience of the parties and witnesses, in the interest of justice." "Section 1404(a) is intended to place discretion in the district court to adjudicate motions for transfer according to an individualized, case-by-case consideration of convenience and fairness." *Astro-Med, Inc. v. Nihon Kohden Am., Inc.*, 591 F.3d 1, 12 (1st Cir. 2009).

The First Circuit has stated the factors to be considered by the District Court in making its determination under § 1404(a), which include: 1) the convenience of the parties and witnesses, 2) the availability of documents, 3) the order in which jurisdiction was obtained by the district court, and 4) the possibilities of consolidation. *Coady v. Ashcraft &*

1 *Gerel*, 223 F.3d 1, 11 (1st Cir. 2000) (citation omitted). “[T]here is a strong presumption in
2 favor of the plaintiff’s choice of forum.” *Id.* The party seeking to transfer, here Defendant
3 Duran, has the burden of proof to disrupt that presumption. *Id.*

4 Defendant Duran has failed to demonstrate that a transfer of this matter to the
5 Southern District of Florida is necessary “for the convenience of the parties and witnesses, in
6 the interest of justice.” First, Duran failed to specify the key witnesses who are located
7 outside the District of Puerto Rico and what their testimony would likely cover. Duran
8 mentions his wife, son, and Rubén García-Saraff, all of whom live in Florida. However, we
9 do not know why or how these individuals are key witnesses to the underlying breach of
10 contract claim. Additionally, with respect to Rubén García-Saraff, given his apparent
11 essential testimony on behalf of Plaintiff G&G, it appears that he will be available
12 throughout the discovery period and for the trial of this matter. In fact, Mr. García-Saraff
13 has explicitly stated that he will be available to travel to Puerto Rico as needed for this
14 litigation. (ECF No. 35-2 at 4).

15 On the contrary, G&G identified fourteen witnesses having discoverable information
16 relating to the underlying case, all of whom live in Puerto Rico. It appears to the court that
17 the only real reason to transfer this matter to Florida is for the convenience of Defendant
18 Duran. However, “transfer is not appropriate where its effect is merely to shift the
19 inconvenience from one party to the other.” *Kleinerman v. Luxtron Corp.*, 107 F.Supp.2d
20 122, 125 (D.Mass 2000) (citations omitted); *Canatelo, LLC v. Bosch Sec. Systems, Inc.* 959
21 F.Supp.2d 220, 223 (D.P.R. 2013). Accordingly, the first factor weighs in favor of
22 maintaining venue in Puerto Rico.

S/José Antonio Fusté
JOSE ANTONIO FUSTE
U. S. DISTRICT JUDGE